HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI

Writ Petition No.9110 of 1996

Between:

Kamal Das (Dead) through Legal
Representative Mahant Darshan Das

... Petitioner

And

The Collector, Hyderabad
And another

... Respondents

:: ORDER::

Counsel for Petitioner: Shri P.V. Sanjay Kumar

Counsel for the Respondents: Government Pleader for Assignment

July 12, 2006

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In this petition filed by Shri Kamal Das who is now represented by his legal representative Mahant Darshan Das, prayer has been made for restraining the respondents from evicting him from lands bearing Survey Numbers 195 and 198, Golconda Mandal, Hyderabad and from demolishing the construction made over it.

In paragraph 2 of the affidavit filed by Shri Kamal Das (since deceased), it has been averred that his father late Shri Acheber Das owned land measuring Ac.10-33 gts. comprised in Survey No.195 and Ac.6-22 gts. comprised in Survey Number 198 in Golconda Mandal, Hyderabad District and his name was entered as 'owner' in the revenue records. In paragaraph 3, it has been averred that in 1992, an entry was made showing the land in the name of Endowments Department, but on an application made to the Deputy Commissioner, Endowments, that entry was annulled. In paragraph 4, a reference has been made to notice dated 15-4-1996 issued by the Mandal Revenue Officer and it has been averred that the respondents are making attempt to forcibly evict him and his family members by claiming the land in question is government land.

In the counter-affidavit filed by Shri Shapan Kumar, Mandal Revenue Officer, Golconda Mandal, it has been averred that land comprised in Survey Numbers 108, 110, 166, 167, 195 and 198 total measuring 86,400-44 sq. mtrs. was recorded as private patta land of the petitioner. He filed declaration under Section 6 (1) of the Urban Land (Ceiling and Regulation) Act, 1976 (for short 'the 1976 Act') before the Special Officer and Competent Authority, Urban Land Ceiling, Hyderabad (for short 'the Special Officer'). After making due enquiry, the Special Officer declared that the land owner was holding

an excess area of 85,400-44 sq. mtrs. Accordingly, provisional order was issued under Section 8 (1) of the 1976 Act and notice under Section 8 (3) was issued on 28-9-1994. The land owner did not file any objection against the provisional order. Therefore, the Special Officer issued final order under Section 8 (4) and statement under Section 9 on 20-2-1995 whereby he finally decided the surplus area case of the land owner. Copies of order passed under Section 8 (4) of the 1976 Act and notice issued under Section 9 were served on the land owner on 30-3-1995 through the enquiry officer. Subsequently, notification under Section 10 (1) was issued on 24-4-1995. The same was published in Andhra Pradesh Gazette No.23 dated 20-7-1995. As regards the order passed by Deputy Commissioner, Endowments, Shri Shapan Kumar has averred that in O.A.No.29 of 1992 filed by Shri Darshan Das, the Deputy Commissioner passed order dated 29-4-1993 and held that the Lunger House could not be entered in the register maintained by the Endowments Department under Section 38 of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987. For the sake of convenient reference, paragraphs 3 and 4 of the affidavit of Shri Shapan Kumar are reproduced below:

> "3. In reply to para 2, it is respectfully submitted that as per the revenue records, the land in Sy.Nos.108, 110, 166, 167, 195 and 198 total extent 86,400-44 sq. meters are private patta lands standing in the name of the petitioner. The petitioner filed declaration u/S.6 (1) of the Andhra Pradesh Urban Land Ceiling Act, 1976 before the Special Officer and Competent Authority, Urban Land Ceiling, Hyderabad. The Special Officer and Competent Authority after due enquiry on the basis of documents filed by the petitioner and the record has determined the declarant as surplus land holder to an extent of 85,400-44 sq. meters (after retaining the area to an extent of 1000 sq. meters). Accordingly provisional orders u/S.8 (1) and

notices u/S.8 (3) of the Act were issued on
28-9-1994. No objections were filed against the provisional orders within the stipulated time. Hence, while confirming the provisional orders, the Special Officer and Competent Authority, Urban Land Ceiling, Hyderabad issued final orders u/s.8 (4) and statement u/s.9 on 20-2-1995 declaring the petitioner as surplus holder and got served through the Enquiry Officer on
30-3-1995. Subsequently, Notification u/s. 10(1) of the Act was issued on 24-4-1995 and published in the Andhra Pradesh Gazette No.23, date 20-7-1995 for an extent of 85,400-44 sq. mtrs. After the said publication, the land becomes government land u/s.10 (1) of the Act. Hence, the petitioner does not have any right to make sale transactions over the land once the land is declared surplus under U.L.C. provisions u/s.5 (3) of the Act.

4. In reply to para 3, it is respectfully submitted that it is true that the name of the petitioner is recorded in revenue records against the property in Sy.No.195 and 198 of Langer House Village. Sri Darshan Das is a petitioner in O.A.No.29 of 1992 on the file of Deputy Commissioner. Petitioner who is the father of the said Darshan Das is the 1st respondent in the O.A. filed by his son. The plea of the petitioner before Deputy Commissioner, Endowments was to delete the Sy.No.195 and 198 of Langer House from the entries made in the book of Endowments as they are not endowed lands. It was observed in the order No.29 of 1992 dated
29-4-1993 that since the Sy.Nos.195 and 198 of Langer House Village are not mentioned in Column No.8 of 38 register maintained by the Endowments Department, the question of deletion does not arise as prayed by the petitioner. The Deputy Commissioner in O.A.No.29/92 has annulled the particulars mentioned in Column No.8 of Section 38 Register belonging to suit mutt i.e., Sri Bansidardas Baba Mutt situated at Fathe Darwaja, Golkonda, Hyderabad City and as certified by the Assistant Commissioner, Endowments Department, Twin Cities, Hyderabad in his file No. in R.Dis.No.B/1304/76 dt.17-8-1976 u/s.45 of the Act 30 of 1987. Further, as per the

proceedings of the Asst. Commissioner, Endowment, it is seen that the land in question attracts the provisions of Section 19 of Urban Land Ceiling Act and that Sri Bansidhar Das Baba Mutt, Fathe Darwaza is registered u/s.38 of the repealed Endowments Act, 17/1996 according to which the landed property was declared by the petitioner owned by the Mutt. It was informed by the Assistant Commissioner that order dated 29-4-1993 in O.A.No.29/92 is not valid since the said order is not confirmed by the Commissioner, Endowments Department, Hyderabad as required under sub-section (4) of Sec.87 of the Act. It is also informed that due to pendency of title issue of the properties between the petitioner and the Endowments Department further action was not processed by the U.L.C. authorities u/s.10 (3) of U.L.C. Act."

I have heard learned counsel for the parties and perused the record. In my opinion, the writ petition is liable to be dismissed because the petitioner has not approached the Court with clean hands and also on the ground that he has not challenged the orders passed by the Special Officer under the 1976 Act.

Since the petitioner has not filed rejoinder affidavit to controvert the averments contained in the counter-affidavit of Shri Shapan Kumar, there is no reason for me to ignore the averments contained in paragraphs 3 and 4 of the latter's affidavit, which are amply supported by the contents of Exs.R.2, R.3 and R.4. The writ petition was filed by the petitioner on 24-4-1996 i.e. after more than one year and six months of the passing of provisional order under Section 8 (1) and more than one year of the passing of final order under Section 8 (4) of the 1976 Act. The petitioner has not denied the factum of filing declaration under Section 6 (1) or receipt of provisional as well as final orders passed by the Special Officer. However, with the sole object of keeping the Court in dark about the proceedings initiated under the 1976 Act and orders passed by the Special Officer, he

deliberately omitted to make a mention of the relevant facts and withheld the orders which have direct bearing on his entitlement to seek protection of his possession. In my view, the petitioner is guilty of highly contumacious conduct and is, therefore, not entitled to relief under Article 226 of the Constitution of India. The rule that a person who does not approach the Court with clean hands is not entitled to be heard on the merits of his claim and is not entitled to relief must be treated as settled by the following judgments of the Supreme Court and the High Courts – **Hari Narain v. Badri Das**[1] , **Welcome Hotel and others v. State of Andhra Pradesh and others etc.,**[2], **G. Narayanaswamy Reddy and others v. Governor of Karnataka and another**[3], **S.P.Chengalvaraya Naidu (dead) by L.Rs. v. Jagannath (dead) by L.Rs. and others**[4], **Nand Lal and others v. State of Jammu and Kashmir and another**[5], and **Harbhajan Kaur v. State of Punjab and others**[6].

I am further of the view that the petitioner cannot successfully challenge the action initiated by the respondents to take possession of the property comprised in Survey Numbers 195 and 198 of Golconda Mandal because he has not challenged the legality and correctness of the proceedings held under the 1976 Act and the orders passed by the Special Officer. Unless those orders are successfully questioned before an appropriate Court, the petitioner cannot prevent the respondents from taking possession of the land which, as mentioned above, was declared surplus more than one year of filing of the writ petition.

In the result, the writ petition is dismissed.

As a sequel to dismissal of the writ petition, interim order dated

25-4-1996 shall stand automatically vacated and WPMP No.11228 of 1996 shall stand dismissed.

G.S. SINGHVI, CJ

July 12, 2006

svs

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[1] AIR 1963 SC 1558
[2] AIR 1983 SC 1015
[3] AIR 1991 SC 1726
[4] JT 1993 (6) SC 331
[5] AIR 1960 J & K 19
[6] 1994 P.L.J. 287